



May 26, 1998

ALL COUNTY LETTER NO. 98-34

TO: ALL COUNTY WELFARE DIRECTORS

**REASON FOR THIS TRANSMITTAL**

- ☐ State Law Change
- ☒ Federal Law or Regulation Change
- ☐ Court Order or Settlement Agreement
- ☐ Clarification Requested by One or More Counties
- ☒ Initiated by CDSS

**SUBJECT: IMPACT OF PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT (PRWORA) OF 1996 ON FUNDING FOR ALIEN FOSTER CHILDREN**

**REFERENCE: ALL COUNTY LETTER 98-01**

The purpose of this All County Letter (ACL) is to inform counties of the affect of the PRWORA, Public Law (P. L.) 104-193, on board and care funding for alien foster children and to provide direction on implementation of PRWORA alien provisions in the Foster Care Program.

**BACKGROUND**

Until the passage of PRWORA, foster children had to meet the citizenship and alienage requirements of the AFDC program in order to be eligible for federal and/or state foster care funds. These requirements were spelled out in the state Eligibility and Assistance Manual Section 42-430. Historically, counties have had to bear the board and care costs for children requiring out-of-home placement if they were not eligible for federal and state funds. Foster care providers were not subject to any citizenship or alienage requirements.

In any given month as many as 2,000 children receive county-only foster care benefits because they are ineligible for federal or state foster care funding or Aid to Families with Dependent Children/Temporary Assistance to Needy Families (AFDC/TANF) benefits. A significantly smaller number may be living with non-qualified alien providers. An additional number of children have been granted permanent residence under color of law (PRUCOL) status and receive either federal or state foster care benefits.

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### PRWORA

Title IV of PRWORA, delineates new rules governing alien eligibility for public benefits. These rules govern federal, state and local (county) foster care benefits as well as benefits under other federal programs. The bill classifies aliens as either "qualified" or "non-qualified" for public benefits and provides a definition of qualified aliens.

Qualified aliens are generally defined by PRWORA as:

- Aliens lawfully admitted for permanent residence
- Aliens granted asylum
- Aliens admitted as refugees
- Aliens paroled into the United States for at least one year
- Aliens whose deportation is being withheld
- Aliens granted conditional entry
- Certain aliens who have been subjected to battery or extreme cruelty

Non-qualified aliens are any aliens not listed above, including, but not limited to, undocumented aliens and aliens lawfully permitted for temporary residence with student or work visas.

### EFFECTS ON FOSTER CARE FUNDING

Effective August 22, 1996, the date PRWORA became law, **new cases involving non-qualified alien foster children** are ineligible for federal foster care benefits. The bill provides that **existing non-qualified alien foster children** remained otherwise eligible until January 1, 1997 for federal foster care benefits.

Effective August 22, 1996, **new cases involving qualified alien foster children who reside with non-qualified alien providers are ineligible** for federal foster care benefits for a period of five years from the date of entry into the United States. If at any time during the five-year time requirement the child is placed with a citizen or qualified alien provider and meets all eligibility requirements, the child may be eligible for federal foster care benefits. If the child is subsequently placed with a non-qualified alien provider within the five-year time requirement, federal eligibility ceases and so on until the passage of five years from the date of entry. As a matter of general policy, the California Department of Social Services (CDSS) would not support the placement of foster children with non-qualified alien providers due to the possible instability of such placements; i.e., it may become necessary for such providers to leave the country on short notice. Nevertheless, new cases involving qualified alien foster children placed with non-qualified alien providers, while ineligible for federal foster care benefits for five years as described above, remain as otherwise eligible for state and county funded foster care benefits.

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Also effective with the passage of P. L. 104-193, **new cases involving foster children with PRUCOL status** are not eligible for federal foster care benefits but continue to be eligible for state and local foster care benefits. **Existing foster children with PRUCOL status** that were receiving federal foster care benefits on August 22, 1996 remain otherwise eligible until January 1, 1997. Welfare and Institutions Code section 11104 currently allows for the provision of state and local benefits on behalf of children with PRUCOL status, and Section 411(d) of P. L. 104-193 only disallows the use of state and local funds (unless subsequent to August 22, 1996 a state law is enacted which affirmatively provides eligibility) for "illegal" aliens who are "not lawfully present." The literal wording of the federal law on its face does not apply to children with PRUCOL status as such children are lawfully residing in the United States. Prior to the passage of P. L. 104-193, children with PRUCOL status were almost never eligible for federal foster care funding because such children could rarely be "linked" to the Federal AFDC Program. Therefore, as a practical matter, the status quo has been maintained for PRUCOL status foster children.

Please note that local (county) foster care funds may still be used for non-qualified alien foster children. Section 411(b) (4) of P. L. 104-193 and the United States Attorney General (AG), in an Order dated August 23, 1996, exempts the use of state and local funds for short-term shelter...for runaway, abused or abandoned children if, "The government-funded programs...deliver in-kind (non-cash) services at the community level...serve purposes...for the protection of life and safety; and do not condition the assistance according to the individual recipient's income or resources." Furthermore the August 23, 1996 Order specifically exempts child welfare services (CWS) and inasmuch as foster care benefits are a necessary continuum of CWS, local foster care benefits are exempt from the alien requirements of P. L. 104-193 Section 411. State foster care funds may not be used for non-qualified aliens due to alien eligibility requirements in Welfare and Institutions Code Section 11104.

## OTHER EXCEPTIONS

In addition, 8 USC 1641(c) and AG Order #2097-97 specify that battered children, children of a battered parent, or such children or parents who have been subjected to extreme cruelty may be considered "qualified" aliens and so eligible for federal, state, or local benefits if a petition or application for permanent residence has been filed with the Immigration and Naturalization Service or the Executive Office for Immigration Review; the application or petition has been granted or it has been found that a pending application sets forth a prima facie case; and the individual is a spouse or child of an individual who has already been granted lawful permanent residence. Such exemption further requires:

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- The federal, State or county benefits sought by the alien or on behalf of the alien child are needed to escape the abuse
- It has been demonstrated that there is a substantial connection between the battery or extreme cruelty suffered by the alien (or the alien child) and the need for the public benefits
- The alien parent did not actively participate in the battery or extreme cruelty of the alien child
- The battered alien or alien child no longer live in the same household as the abuser

These exemptions, although limited, may be of value in some cases. Children meeting such exemption requirements must be placed with a citizen or qualified alien provider.

### REQUIRED COUNTY ACTION

Effective the date of this ACL, counties are directed as follows:

- 1) Discontinue claiming federal financial participation (FFP) and state funding for non-qualified foster children (for PRUCOL status cases see #4 below).
- 2) Review all continuing cases at next redetermination of eligibility to ensure that number 1 above is applied retroactively to January 1, 1997.
- 3) Discontinue claiming FFP for qualified alien foster children who applied for foster care benefits on or after August 22, 1996 and who are residing with non-qualified alien providers, until the passage of five years from the date of entry. Such cases may be eligible for state and local (county) funding, as appropriate.
- 4) Discontinue claiming FFP on January 1, 1997 for foster children receiving federal foster care benefits and whose PRUCOL status was granted on or prior to August 22, 1996. FFP may not be claimed for foster children who entered the United States and were granted PRUCOL status on or after August 22, 1996. State funds may be claimed, as appropriate.
- 5) Review all continuing PRUCOL cases at next redetermination of eligibility to ensure that number 4 above is applied retroactively to January 1, 1997 for children who received federal foster care benefits on or prior to August 22, 1996 and whose PRUCOL status was granted on or prior to that date. Ensure that FFP is not claimed in cases where the foster child entered the U.S. on or after August 22, 1996 and who was granted PRUCOL status on or after that date. State funds may be claimed, as appropriate.

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- 6) Local (county) foster care benefits may continue to be provided to non-qualified alien foster children.
- 7) All foster care cases determined, prior to the passage of PRWORA, to meet the eligible alien definitions of Eligibility and Assistance Manual Section 42-431 (excluding PRUCOL cases), continue to remain eligible for federal, state and local benefits if all other requirements continue to be met.

The CDSS Foster Care staff will be reviewing and amending existing regulations to reflect the changes brought about by PRWORA.

If you have questions about this letter or eligibility for foster care benefits in general, please contact your Foster Care Funding and Systems Consultant at (916) 323-1263.

Sincerely,



MARJORIE KELLY  
Deputy Director  
Children and Family Services Division

Enclosures

c: DHHS Region IX

### Alien Eligibility Funding For CalWORKs and Foster Care Programs

CalWORKs	Foster Care
<b>Qualified alien and entered before August 22, 1996:</b>  Federally eligible.	(a) Federally eligible if resides with a citizen provider or a qualified alien provider. (b) Non-federally eligible for five years if residing with a nonqualified alien provider.
<b>Qualified alien and entered on or after August 22, 1996:</b>  If not meeting exception criteria, non-federally eligible for five years from the date of entry. State funded individual if otherwise eligible.	(a) Federally eligible if resides with a citizen provider or a qualified alien provider. (b) Non-federally eligible for five years if residing with a nonqualified alien provider.
<b>PRUCOL status and entered before August 22, 1996:</b>  Non-federally eligible if not meeting the definition of qualified alien. State funded individual if otherwise eligible.	If receiving federal foster care benefits on or before August 22, 1996 and have PRUCOL status, remains federally eligible until January 1, 1997.
<b>PRUCOL status and entered on or after August 22, 1996:</b>  Non-federally eligible. State funded individual if otherwise eligible.	(a) Non-federally eligible.  (b) State funds may be claimed if otherwise eligible
<b>Certain battered aliens as defined in PRWORA, Title IV, Section 431:</b>  Federally eligible after five years.	(a) Federally eligible if residing with citizen provider or qualified alien provider. (b) No funding available if residing with a non-qualified alien provider.
<b>Aliens not within the definition of qualified alien:</b>  Non-federally eligible but state funded if otherwise eligible.	If the county feels that foster care is necessary for non-federal or non-state eligible case, the case may be funded with county only funds.

## FOSTER CARE LEGAL IMMIGRANT

### Funding Source Changes Due to PRWORA

STATUS OF CHILD	Resides with Citizen Provider			Qualified Alien Provider			Non-Qualified Alien Provider		
	FFP	SFP	Change From Prior Rule	FFP	SFP	Change From Prior Rule	FFP	SFP	Change From Prior Rule
Citizen Child	✓	✓		✓	✓		✓	✓	
Qualified Alien Child Prior to 8/22/96	✓	✓		✓	✓		✓ <sup>1</sup>	✓	✓
Qualified Alien Child, 8/22/96 or Later	✓	✓		✓	✓		✓ <sup>1</sup>	✓	✓
PRUCOL Child Prior to 8/22/96 <sup>2</sup>		✓	✓		✓	✓		✓	✓
PRUCOL Child, 8/22/96 or Late <sup>2</sup>		✓	✓		✓	✓		✓	✓
Exempt Qualified Alien Child Due to Abuse	✓	✓		✓	✓		No Funding Available		
Non-Qualified Alien									
	County Funds Only			County Funds Only			County Funds Only		

Note: If a county feels that foster care is necessary for a non-federal or non-state eligible case, it can be funded with county funds only.

<sup>1</sup>Nonfederally eligible till after five years has elapsed from the date of entry of the qualified alien foster child.

<sup>2</sup>Prior to rule change, the PRUCOL foster care child was federally eligible.